

Co-Counsel Guidelines for Minority and Women Outreach Program

This statement establishes the FDIC Legal Division's Guidelines to promote co-counseling arrangements between minority- and women-owned law firms and other Outside Counsel.

Background

It is the Legal Division's policy affirmatively to seek to retain minority- and women-owned law firms as Outside Counsel. Although direct referral of work to minority- and women-owned law firms is preferred, co-counsel referrals should be considered if direct referrals are not appropriate because of the inexperience or size of the firm.

Some minority- and women-owned law firms have the skills, but not the personnel resources required to represent the FDIC, and others do not have the relevant experience in complex commercial litigation and transactions common to FDIC representation. Co-counsel arrangements can facilitate referrals to minority- and women-owned law firms by allowing them to develop new areas of expertise that will enable them ultimately to receive direct referrals of the FDIC matters.

Additionally, participation by a firm subject to the Division's Cap Policy (Policy No. 91-1) in a co-counsel arrangement with a minority- or women-owned law firm should be considered a significant factor in determining whether to grant a waiver of the Cap Policy.

Guidelines

Combining Resources. A co-counsel referral is intended to combine the resources of two or more outside law firms under the close supervision of an FDIC Legal Division attorney (Oversight Attorney).

Requirements for Co-counsel Referrals. All participants in any co-counsel arrangement must have a current Legal Services Agreement (LSA) with the FDIC, and must certify that their arrangement complies with these Guidelines. In the event of a conflict between the terms of an Outside Counsel's LSA and any co-counsel arrangement, the terms of the LSA shall govern.

Guidelines (cont.)

Allocation of Work. Upon commencement of a co-counsel referral, the participants, in consultation with the FDIC's Oversight Attorney, should develop a case plan for managing the assignment and describing the allocation of work between each participant, which shall be subject to approval by the FDIC's Oversight Attorney before any substantial work is commenced. The case plan should ensure significant participation by the minority- or women-owned law firm in substantive legal matters. Generally, and particularly for purpose of a requested waiver of the Cap Policy, the minority- or women-owned law firm participant should be responsible for at least 20% of the work. Participants in a co-counsel referral also should provide the FDIC's Oversight Attorney with a combined budget and staffing plan for the engagement, including an estimate of the percentage of work anticipated by each participant.

Responsibilities of Participants. Generally, one co-counsel participant would not be liable for the actions of any other participant in a co-counsel arrangement. However, if any participant believes that any action by another participant may constitute malpractice, breach of any ethical standards of conduct, or otherwise may affect adversely the interests of the FDIC, he or she promptly shall so inform the FDIC's Oversight Attorney.

Duplicate Billing. The FDIC does not pay for duplication of effort or inefficiencies arising from co-counsel arrangements. Co-counsel participants, therefore, are expected carefully to divide and assign tasks to avoid duplicate work and billings. Each participant is required to bill separately for his/her work in accordance with applicable Legal Division billing procedures.

Disputes Between Co-Counsel. Outside Counsel in co-counsel arrangements should inform the FDIC's Oversight Attorney promptly of any dispute or disagreement with its co-counsel participant(s) pertaining to the representation. If the Legal Division determines that any such dispute may affect adversely the interests of the FDIC, it may require one or more of the participants to withdraw from the representation.

Review of Co-Counsel Referrals. The FDIC Legal Division's Outside Counsel Section periodically will review individual co-counsel arrangements to determine compliance with these guidelines.